

# FINAL ORDER

Date: 6/5/09

IN THE MATTER OF  
STEVEN J. MORELAND

Applicant

\* BEFORE THE  
\* COMMISSIONER OF  
\* FINANCIAL REGULATION  
\* OAH NO.: DLR-CFR-76B-08-33104

\* \* \* \* \*

## PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 11<sup>TH</sup> day of May, 2009 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Applicant has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Applicant has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



Sarah Bloom Raskin  
Commissioner of Financial Regulation

STEVEN J. MORELAND,

APPELLANT

v.

OFFICE OF THE COMMISSIONER OF

FINANCIAL REGULATION

\* BEFORE WILLIAM SOMERVILLE,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH CASE NO: DLR-CFR-76B-08-33104

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On July 21, 2008, the Office of the Commissioner of Financial Regulation, Department of Labor, Licensing and Regulation (Agency) denied the Appellant's application for a mortgage originator's license. On or about August 18, 2008, the Appellant filed a request for hearing to challenge that determination, and the Agency referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on February 6, 2009, at the OAH in Hunt Valley, Maryland.<sup>1</sup> Assistant Attorney General Thomas Lowery represented the Agency. The Appellant failed to appear.

As a preliminary matter, the Agency offered evidence that the Appellant had been notified of the hearing and asked that we proceed in the Appellant's absence. I concluded that it was appropriate to proceed in the Appellant's absence. Code of Maryland Regulations (COMAR) 09.01.03.05 (reasonable notice) and 28.02.01.05 (reasonable notice).

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<sup>1</sup> The Agency delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order. Agency Exhibit 3.

I heard this case pursuant to the applicable statute, Md. Code Ann. Fin. Inst. § 11-608 (Supp. 2008). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2008), OAH's Rules of Procedure, COMAR 28.02.01, and COMAR 09.01.03.

### **ISSUE**

Did the Agency properly deny the Appellant's application for a mortgage originator's license?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Agency offered the following documents, which were admitted into evidence:

- Agency #1 - Notice of action
- Agency #2 - Request for hearing, undated
- Agency #3 - Referral letter, 8-27-08
- Agency #4 - Notice of Hearing, 10-21-08
- Agency #5 - Affidavit, 5-19-08
- Agency #6 - E-mail note, 6-9-08
- Agency #7 - Note, 7-7-08
- Agency #8 - E-mail note, 7-14-08
- Agency #9 - Letter, 8-6-08
- Agency #10 - Packet of court records
- Agency #11- Statutes
- Agency #12- More statutes
- Agency #13- Amended Statute (HB 363) effective 6-1-08.

## Testimony

The Agency offered the testimony of Stephen Prozeralik, Assistant Commissioner for Enforcement.

## FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On or about May 19, 2008, the Appellant began the application process to become a licensed mortgage loan originator. The Appellant submitted application documents to the Agency at that time.
2. Soon thereafter, the Agency began to perform a background investigation into the Appellant's criminal history, among other things.
3. The Appellant's criminal history reflects arrests and convictions for several crimes, as follows:  
  
July 11, 2000 – received probation before judgment for possession of CDS, not marijuana  
  
April 5, 2001 – guilty of theft over \$300  
  
November 26, 2001 – guilty of Assault, second degree  
  
January 9, 2002 – guilty of theft over \$500 (felony)  
  
August 9, 2002 – guilty of possession of CDS, not marijuana.
4. The Agency denied the Appellant's application for a mortgage originator's license on July 21, 2008. As legal authority, that notice document cited, among other provisions, section 11-605(b) of the Financial Institutions Article.

## DISCUSSION

The Appellant has the burdens of production and persuasion to demonstrate that he is of good moral character and has general fitness to warrant the belief that he will act as a mortgage

originator in a lawful, honest, fair, and efficient manner. Md. Code Ann., Fin. Inst. § 11-605(a)(2) (Supp. 2008).

In this case, the Agency alleged, generally, in the notice of action that the denial was based on section 11-605(b) of the Financial Institutions Article, among other code sections. (Agency Exhibit 1.) That code section contains both the mandatory denial and the discretionary denial provisions. I conclude that the Appellant was properly notified that both the mandatory denial and discretionary denial portions of section 11-605(b) were a basis of the Agency's action. Md. Code Ann., State Gov't §10-207 (reasonable notice requirement).

The Agency argued that the Appellant did not show that he is "of good moral character" as required by statute. Md. Code Ann., Fin. Inst. § 11-605(a)(2). The Agency argued that it should prevail on the mandatory denial provisions of the statutory scheme, Md. Code Ann., Fin. Inst. § 11-605(b)(2) (commissioner shall deny an application), as well as under the discretionary provisions of the statutory scheme, Md. Code Ann., Fin. Inst. § 11-605(b)(1) (commissioner may deny an application). The Agency relies on evidence of the Appellant's criminal history.

With regard to the mandatory denial provisions of the statute, the Agency determined that the Appellant was generally unfit, as a matter of law, by virtue of the provisions of the disqualification statute. Md. Code Ann., Fin. Inst. § 11-605(b)(2) (Supp. 2008). That statute provides:

(2) The Commissioner shall deny an application for a license filed by an individual who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery.

Md. Code Ann., Fin. Inst. § 11-605(b)(2) (Supp. 2008). Thus, if an applicant has been convicted of a felony involving theft, within the previous ten years, the applicant is statutorily disqualified from obtaining a license. In the instant case, the Appellant was convicted of felony theft within

the past ten years. (Finding of Fact three.) The Appellant has not met his burdens to show that he is eligible for a license under this code section.

The Agency also determined that it had discretion to deny the license under the statutory scheme. Md. Code Ann., Fin. Inst. §§ 11-605(b)(1) and 11-615 (Supp. 2008) (commissioner may suspend or revoke a license under certain conditions). The Agency argued that, separate and independent from the mandatory disqualification statute, the Agency has discretion to deny the application for a license because the Appellant has committed acts that would serve as sufficient grounds for suspension of a license. Md. Code Ann., Fin. Inst. § 11-605(b)(1). The Agency points to the Appellant's recent criminal history, as set forth in Finding of Fact three, above. The discretionary denial portion of the statute provides:

Except as provided in paragraph (2) of this subsection, the Commissioner may deny an application for a license filed by an individual who has committed an act that would serve as a sufficient ground for suspension or revocation of a license under this subtitle or a mortgage lender license under Subtitle 5 of this title.

Md. Code Ann., Fin. Inst. § 11-605(b)(1).

The Appellant's theft convictions set forth in Finding of Fact three, above, demonstrate separate acts, as well as a pattern of conduct, that serve as sufficient grounds for suspension under the mortgage originator statutes. They certainly demonstrate dishonesty. Md. Code Ann., Fin. Inst. § 11-615(a)(5). Dishonesty is a trait that is directly related to the fitness and qualification of a person to act as a mortgage originator. Md. Code Ann., Fin. Inst. § 11-615(a)(2). I cannot determine, on the basis of the record before me, that the Agency abused its discretion by denying the Appellant's application under the discretionary provisions of the applicable statute. Md. Code Ann., Fin. Inst. § 11-605(b)(1).

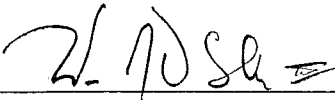
### CONCLUSIONS OF LAW

I conclude as a matter of law that the Agency properly denied the Appellant's application for a mortgage originator's license. Md. Code Ann., Fin. Inst. §§11-605(b)(1) and (2) and 11-615(a) (Supp. 2008).

### RECOMMENDED ORDER

I recommend that the Office of the Commissioner of Financial Regulation **ORDER** that the Appellant's application for a mortgage originator's license be **DENIED**.

April 22, 2009  
Date Decision Mailed

  
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William J.D. Somerville, III  
Administrative Law Judge

WS/  
# 104078